

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TRI-CITY HEALTHCARE DISTRICT,  
  
Plaintiff,  
  
vs.  
  
HC TRI-CITY I, LLC; et al.,  
  
Defendants.

CASE NO. 09-CV-2334 JLS (CAB)

**ORDER: GRANTING MOTION  
TO AMEND**

(Doc. No. 20)

Presently before the Court is Plaintiff's motion to amend. (Doc. No. 20.) Defendant has filed an opposition and Plaintiff has replied. (Doc. Nos. 22 & 23.) Having fully reviewed the motion and the parties arguments, the Court **GRANTS** the motion.

Plaintiff appropriately recognizes that its motion is governed by Federal Rule of Civil Procedure 15(a)(2). (Memo. ISO Motion at 3.) When a party may no longer amend its pleading as of right under Rule 15(a)(1), it "may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). The rule instructs the Court to "freely give leave when justice so requires." *Id.* "Four factors are commonly used to determine the propriety of a motion for leave to amend. These are: bad faith, undue delay, prejudice to the opposing party, and futility of amendment. These factors, however, are not of equal weight in that delay, by itself, is insufficient to justify denial of leave to amend." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citations omitted). Further, "prejudice to the opposing party" is "the touchstone of the inquiry" and "carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.

1 2003) (citations and internal quotation marks omitted).

2 The specific amendment will “add a single cause of action for breach of contract in order to  
3 allow [Plaintiff] to recover monetary damages resulting from [Defendant’s] breach of the subject  
4 Ground Lease” along with facts supporting the new claim. (Memo. ISO Motion at 4.)

5 Defendant takes umbrage with this request, accusing Plaintiff of “undue delay, dilatory  
6 motive, [and causing] prejudice.” (Opp. at 8.) It cites only the fact that it has, according to Plaintiff,  
7 been a year since the complaint was first filed in support of those accusations. (*See id.* at 8–11.) From  
8 this, Defendant claims that “[p]rejudice is inherent.” (*Id.* at 10.) Specifically, Defendant expects to  
9 “challenge this pleading as . . . defective.” (*Id.*) Moreover, HC claims to have “already been  
10 prejudiced” because it has already conducted some discovery. (*Id.* at 11.)

11 The Court finds that Defendant HC’s arguments are entirely without merit. First, HC offers  
12 no proof of bad faith or futility of amendment. As such, these factors cut in favor of allowing Plaintiff  
13 to amend.

14 Second, the Court finds that Plaintiff has not unduly delayed in asking for this amendment.  
15 Contrary to Defendant’s suggestion, this case was only filed eleven months ago. (*See* Doc. No. 1.)  
16 Moreover, Defendant only removed the case to this Court nine months ago. Moreover, much of the  
17 time spent so far in this case is due to Defendant’s own action. In mid-November 2009, Defendant  
18 filed a motion to dismiss. (Doc. No. 7.) The Court denied that motion in late January 2010. (Doc.  
19 No. 13.) As such, this case was stalled for two of its nine months in this Court at Defendant’s behest.  
20 This is not a delay that would result in inherent prejudice or preclude amendment as a matter of equity.

21 However, even if the Court were to find delay, that would not, in and of itself, be  
22 determinative. As the Ninth Circuit has clearly held, “delay, by itself, is insufficient to justify denial  
23 of leave to amend.” *DCD Programs*, 833 F.2d at 186.

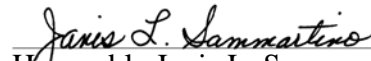
24 Finally, the Court rejects the suggestion that Defendant would be prejudiced by amendment.  
25 The Case Management Order was only issued on June 3, 2010 and set a discovery cut-off of  
26 December 10, 2010. (Doc. No. 19.) Being hardly two months into discovery, it is exceptionally  
27 disingenuous for Defendant to complain that there will not be enough time to fully investigate the new  
28 claim. That said, Defendant is free to ask Magistrate Judge Bencivengo for additional time, should

1 it, despite its best efforts, be unable to complete discovery. Thus, the Court finds no question of  
2 prejudice. In light of this, all of the factors for allowing amendment cut in Plaintiff's favor.

3 For these reasons, the Court finds that justice requires Plaintiff's motion to amend be  
4 **GRANTED.** Plaintiff **SHALL FILE** its amended complaint within 7 calendar days of the date this  
5 Order is electronically docketed.

6 IT IS SO ORDERED.

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8 DATED: August 4, 2010

9   
10 Honorable Janis L. Sammartino  
11 United States District Judge  
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